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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CARLOS MARTINEZ ESCRIBANO

Appeal 2016-006426
Application 12/948,406
Technology Center 2100

Before STEPHEN C. SIU, JAMES R. HUGHES, and SCOTT B. HOWARD, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 4–9, 11–15, 17–21, and 25–27. We have jurisdiction under 35 U.S.C. § 6(b).

The disclosed invention relates generally to obtaining notes for software objects. Spec 1. Independent claim 1 reads as follows:

> 1. A computer-implemented method, the method comprising:

executing, in a customer computer system, a process that utilizes a first object and a second object during execution of the process;

determining, by the customer computer system, that a problem occurred during execution of the process;

performing, by the customer computer system and after determining that the problem occurred, a trace of the process while reproducing the problem, the trace identifying the first object and the second object as being involved in reproducing the problem;

conducting, by the customer computer system and after performing the trace, a first search that uses an identifier for the first object to perform the search and that is of a plurality of notes configured for implementation in the customer computer system, and in response:

(i) determining, using the customer computer system, that a first note of the plurality of notes applies to the identified first object based on results of the first search conducted using the identifier for the first object, wherein the first note is an update that is for the first object and that has not already been installed on the customer computer system;

(ii) responsive to determining that the first note of the plurality of notes applies to the identified first object, displaying a graphic representation of the first note;

(iii) receiving a user selection of the graphic representation of the first note;

(iv) responsive to receiving the user selection, implementing the first note to update the first object;

conducting, by the computing system and after performing the trace, a second search that uses an identifier for the second object to perform the search and that is of the plurality of notes configured for implementation in the customer computer system, and in response:

(i) determining, using the customer computer system, that a second note of the plurality of notes applies to the identified second object based on results of the second search conducted using the identifier for the second object, wherein the second note is an update for the second object;

(ii) determining that the second note has already been installed on the customer computer system;

(iii) responsive to determining that the second note has already been installed on the customer computer system, bypassing presentation of a graphic representation of the second note;

executing, in the customer computer system and after having implemented the first note and determining that the second note has already been installed, the process;

determining that the problem did not occur during execution of the process after implementation of the first note and the determination that the second note has already been installed.

The Examiner rejects claims 1, 9, and 15 under 35 U.S.C. § 103(a) as unpatentable over Yuan et al., "Automated Known Problem Diagnosis with Event Traces," EuroSys 2006 ("Yuan"), Smith et al. (US Publication 2007/0277167 A1, published Nov. 29, 2007), Button et al. (US Publication 2012/0137279 A1, published May 31, 2012), and Official Notice; claims 4–6, 11, 12, 17, 18, 21, and 23 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, Official Notice, and Smith et al., HP (US 6,477,703 B1, issued Nov. 5, 2002); claims 7, 8, 13, 14, 19, and 20 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, Official Notice, and Subramanian et al. (US Publication 2006/0130040 A1, published June 15,

2006); claim 22 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, Official Notice, Smith-HP, and Hines (US Publication 2002/0112200 A1, published Aug. 15, 2002).

ISSUE

Did the Examiner err in rejecting claims 1, 4–9, 11–15, 17–21, and 25–27?

ANALYSIS

Claim 1 recites conducting a first and second "search" "after performing the trace." The Examiner finds Yuan discloses "performing a trace," Smith discloses "a search for first and second objects," and it would have been obvious to combine the teachings of Yuan and Smith "to find any updates to the objects identified . . ." Ans. 24 (citing Yuan 377, 378, 382; Smith ¶¶ 38, 43). Appellant argues Smith discloses a search that "is applied when a particular software program is executed," but fails to disclose or suggest "conducting . . . a . . . search" "after performing the trace" and is "silent as to performing a trace." App. Br. 14. We are not persuaded by Appellant's argument. In view of the Examiner's reliance on the combination of Yuan and Smith, as opposed to Smith in isolation, even assuming Appellant to be correct that Smith is "silent as to performing a trace" and does not disclose conducting a search after performing a trace, Appellant does not explain error in the Examiner's finding that Yuan

discloses a trace or that the combination of Yuan and Smith discloses conducting a search after performing a trace. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller,* 642 F.2d 413 (CCPA 1981).

Appellant also argues "Yuan does not disclose or even imply that a search is conducted after performing the trace." Reply Br. 2. As noted above, the Examiner's rejection is based on the combination of Yuan and Smith and that Smith discloses the claimed "search." We do not find Appellant's arguments that Yuan in isolation (or Smith in isolation) fails to disclose an alleged claim feature persuasive given the Examiner's reliance on the combination of both Yuan *and* Smith.

Claim 1 recites a first search that uses an identifier for the first object to perform the search and that is of a plurality of notes configured for implementation in the customer computer system. The Examiner finds Smith discloses this feature. Final Act. 8 (citing Smith ¶¶ 38, 43). As the Examiner points out, Smith discloses searching for updates—a "list of updates [e.g., "notes"] that are available for the software program," which includes an update "that has not already been downloaded [or] installed" for a "particular software program" (i.e., a "note," as claimed, being "an update" for an object "that has not already been installed on the . . . computer system," as recited in claim 1). Smith ¶ 43.

Appellant argues Smith discloses "us[ing] changes in code, such as a hexadecimal representation to produce a list of updates, which is different than a first search that uses an identifier for the first object to perform the search and that is of a plurality of notes configured for implementation in the customer computer system." App. Br. 14–15; *see also* Reply Br. 3. We are not persuaded by Appellant's argument. As previously discussed, claim 1 recites "a first search that uses an identifier for the first object to perform the search and that is of a plurality of notes configured for implementation in the customer computer system." Appellant does not demonstrate sufficiently that claim 1 also recites that the "plurality of notes" are not produced by changing code or using a hexadecimal representation. Indeed, claim 1 does not appear to recite any relevant specific features of producing the "plurality of notes" at all.

Claim 1 recites determining a problem did not occur during execution of a process after implementation of a first update (i.e., "first note") and determination that a second update (i.e., a "second note") has already been installed. The Examiner finds that "[i]t is officially noted that testing an applied update . . . is well known in the art." Final Act. 11. Appellant argues that "[t]he burdens regarding Official Notice have not been met by the final Office action" because the Official Notice is "unsupported by documentary evidence." App. Br. 15–16. In response, the Examiner provides documentary evidence in support of the Official Notice – i.e., the Examiner cites US Patent Publication 2004/0060044 ("Das") as disclosing

"testing an update applied to a customer computer system." Ans. 28 (citing Das 45). Hence, Appellant's argument pertaining to this issue is moot.

Appellant does not provide additional arguments with respect to the other claims subject to appeal and does not provide arguments with respect to the other cited prior art references. App. Br. 16.

SUMMARY

We affirm the Examiner's rejection of claims 1, 9, and 15 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, and Official Notice; claims 4–6, 11, 12, 17, 18, 21, and 23 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, Official Notice, and Smith-HP; claims 7, 8, 13, 14, 19, and 20 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, Official Notice, and Subramanian; and claim 22 under 35 U.S.C. § 103(a) as unpatentable over Yuan, Smith, Button, Official Notice, Smith-HP, and Hines.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED